

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
CENTRAL EXCISE APPLICATION NO.30 OF 2000**

The Commissioner of Central Excise ..Applicant.

V/s.

M/s.Malohtra Steel Product ..Respondent.'

Mr.A.J.Rana, Senior counsel with H.V.Mehta for applicant.

Mr.Prakash Shah i/b. PDS Legal for respondent.

**CORAM : V.C. DAGA AND
J.P.DEVADHAR, JJ.**

DATED : 28TH SEPTEMBER, 2005.

P.C. :-

Heard. Both parties agreed that without recording reasons, the application may be disposed of with direction to the Tribunal to refer the question framed along with the statement of case. In this view of the submissions made and looking to the consensus between the parties, the reasons in support of the order is dispensed with. The Tribunal is directed to refer the substantial question of law with statement of the case. Th question of law reads as under:-

- 1) In view of sub-section (2) read with sub-section (4) of section 35E of the Central Excise Act, 1944, whether an order passed by the reviewing authority under sub-section (2) of section 35E, directing an officer other than the adjudicating officer will be equally valid and whether the authorised officer other than the adjudicating officer can exercise the jurisdiction to file an application under sub-section (4) of section 35E ?
- 2) Whether the Commissioner (Appeals) having come to the conclusion after considering legal provisions and various Tribunal decisions that endorsed invoice is not a valid document for availing Modvat credit, under Rule 57G, was legally obliged to look into the evidence produced by the assessee to ascertain authenticity of the endorsed invoice ?

Application stands disposed of accordingly with
nor order as to costs.

(V.C. DAGA, J.)

(J.P.DEVADHAR, J.)